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CERTIFICATE OF TRANSMISSION BY FACSIMILE (37 CFR 1.8)			Docket No. RO998-16
Applicant(s): Beach et al.			
Application No. 09/181,402	Filing Date 10/28/1998	Examiner Chung, Daniel J.	Group Art Unit 2672
Invention: METHOD AND APPARATUS FOR PRIORITY TRANSMISSION AND DISPLAY OF KEY AREAS OF IMAGE DATA			
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THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Beach *et al.*

Art Unit: 2672

Serial No.: 09/181,402

Dkt. No.: RO998-106

Filed: 10/28/1998

Examiner: Chung, Daniel J.

**Title: METHOD AND APPARATUS FOR PRIORITY TRANSMISSION AND DISPLAY
OF KEY AREAS OF IMAGE DATA**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF OF APPELLANTS

This Reply Brief addresses issues in the Examiner's Answer mailed September 6, 2005.

09/181,402

1

GROUND OF REJECTION 1

Claims 1- 6, 8-12, 14-21, 23-29, and stand rejected as allegedly being unpatentable under 35 U.S.C. §103(a) over Scorse et al. (5,426,513) in view of Cash et al (5,481,312).

Claim 1

Appellants contend that Scorse in view of Cash does not teach or suggest the feature: “a prioritized graphics file residing in the memory, the prioritized graphics file defining higher priority image transmission portions and lower priority image transmission portions that have been selected and assigned priorities such that when the prioritized graphics file is transferred across a network, the higher priority image transmission portions of the prioritized graphics file are transmitted before the lower priority image transmission portions of the prioritized graphics file.”

The Examiner's Answer admits that “Scorse et al does not explicitly disclose that a single prioritized graphics file residing in the memory, which contains higher priority image transmission portions and lower priority image transmission portions. ”.

The Examiner's Answer alleges that “Cash et al discloses that the method of transmitting a prioritized video bitstream [“a prioritized graphics file”], which stored in hard disc 115, 202 [“memory”], including a plurality of high priority segments [“higher priority image transmission portions”] and low priority segments [“lower priority image transmission portions”], thereby generating the high priority segments first on monitor in client. (See Fig 1, Fig 2, Fig 4, Abstract, col I line 52-62)”

The Examiner's Answer argues: “It would have obvious to one having ordinary skill in

the art at the time of Applicant's invention to incorporate the teaching of Cash et al into the teaching of Scorse et al, because they both relate to method of transmitting image/graphic data in network, and the teachings/suggestions in Scorse (See col 6 line 17-19) regarding of "transmission time is kept to a minimum and the information of most importance is transmitted with priority", would provide the motivation to have prioritized image file, in order to retrieve/render more important/significant information with effective and easy manner."

In response, Appellants contend that the Examiner's argument for modifying Scorse by Cash's alleged teaching of storing higher and lower priority image transmission portions of a prioritized graphics file in the memory is not persuasive. Scorse discloses that the higher and lower priority image transmission portions of a visual image are selected by the user (also called "operator" by Scorse) after the user is presented with a visual image. In particular, the user sequentially: selects a first portion of the image, transmits the first portion, selects a second portion of the image, transmits the second portion, etc. See Scorse, col. 5, 63 - col. 6, line 33. The aforementioned role of the user in sequentially prioritizing and transmitting the portions of the image to be transmitted is the essence of Scorse's invention and cannot be eliminated. See Scorse, col, 2, lines 35-41 ("It is yet another object of the present invention to provide a novel video image system and method in which the resolution of the image to be transmitted may be controlled by the operator of the video system in accordance with the operator's interest in the contents of the video image"). See also Scorse, col, 2, lines 42-45 ("It is still a further object of the present invention to provide a novel system and method of video image transmission whereby the portion of the image of most interest to the user is transmitted first"). Therefore, Appellants contend that the higher and lower priority image transmission portions of the visual image in

Scorse do not exist until selected by the user.

The next question is whether there is motivation to generate a file and store the file in memory, wherein the file would contain the higher and lower priority image transmission portions of the visual image. As explained *supra*, this file would have to be generated after the user selects the higher and lower priority image transmission portions. Appellants argue that no such motivation exists. In fact, generation of such a file would serve no purpose, because Scorse's disclosed method of sequentially selecting and transmitting the portions of the image in their order of priority is extremely efficient. See Scorse, col. 6, lines 17-19 ("In this way, transmission time is kept to a minimum and the information of most importance is transmitted with priority"). In fact, to generate such a file and store the file in memory would actually delay transmission of the higher priority portions by preventing the high priority portions from being transmitted until the lower priority portions have been selected and stored in memory along with the higher priority portions in such a file. Therefore, generation of such a file would in fact be contrary to Scorse's technique of transmitting the higher priority immediately after they are selected by the user and would unnecessarily delay transmission time. Accordingly, it would not be obvious to a person of ordinary skill in the art to generate such a file.

In relation to the preceding argument that to generate such a file and store the file in memory would actually delay transmission of the higher priority portions, the Examiner's Answer in "Response to Argument" argues that "as indicated in Fig 4 of Scorse, generation of graphic file is necessarily required for transmitting image data across the network. (i.e. 'data packet', shown in Fig 4 of Scorse; See col 6 line 52, cal 7 line 10-11] therefore, implementing the

prioritized graphic file into the Scorse's technique would provide the transmission of image data between the networks with minimum transmission time with information priority."

In response, Appellants contend that the preceding argument in the Examiner's Answer is not persuasive, because generation of data packets for transmission of image data between the networks does not require generation and storage of a graphics file in memory. Indeed, Scorse, col. 6, line 56 - col. 7, line 27 discloses that the screen is divided into blocks of pixels and the data packets are constructed by selectively loading such blocks of pixels directly into the data packets. Scorse does not disclose generating a file from the selected data blocks, nor would there be any motivation to do so in Scorse, since the direct loading of the blocks of pixels into the data packets (as taught by Scorse) minimizes delay and transmission time of the higher priority portions.

In addition, the Examiner's Answer in "Response to Argument" argues that "Cash et al clearly discloses that the method of transmitting a prioritized video bitstream ["a prioritized graphics file"], including a plurality of high priority segments ["higher priority image transmission portions"] and low priority segments ["lower priority image transmission portions"], thereby generating the high priority segments first on monitor in client. (See Fig 1, Fig 2, Fig 4, Abstract, col 1 line 52-62) ".

In response, Appellants contend that the preceding argument in the Examiner's Answer is not persuasive, because the issue is not what Cash discloses but rather whether it is obvious to modify Scorse to generation and store a file in memory, wherein the file would contain the higher and lower priority image transmission portions of the visual image, for which the Examiner's

Answer has not presented any persuasive argument.

Based on the preceding arguments, Appellants contend that claim 1 is not unpatentable under 35 U.S.C. §103(a) over Scorse in view of Cash. Accordingly, Appellants argue that the rejection of claim 1 is improper and should be reversed.

Claim 2

Since claim 2 depends from claim 1, which Appellants have argued *supra* to be patentable under 35 U.S.C. §103(a), Appellants maintain that claim 2 is not unpatentable under 35 U.S.C. §103(a).

In addition, Appellants contend that Scorse in view of Cash does not disclose "the receiving computer comprising an image interpreter and an image viewer residing on the receiving computer, the image interpreter translating the received image transmission portions of the prioritized graphics file into image data, such that **the image viewer can display the higher priority image transmission portions of the prioritized graphics file before displaying the lower priority image transmission portions of the prioritized graphics file**" (emphasis added).

The Examiner's Answer argues: "Regarding claim 2, refer to the discussion for the claim 1 hereinabove, Cash et al further discloses that a receiving computer [230] receiving image transmission portions of the prioritized graphics file [a prioritized video bitstream], the receiving computer comprising an image interpreter [i.e. 221,223,224] and an image viewer [225] residing on the receiving computer, the image interpreter translating the received image transmission

portions of the prioritized graphics file into image data, such that the image viewer can display the higher priority image transmission portions of the prioritized graphics file before displaying the lower priority image transmission portions of the prioritized graphics file. (See Fig 2, Fig 4, col 1 line 51-62)".

In response, Appellants content that col, 1, lines 51-62 of Cash does not support the allegation in the Examiner's Answer that Cash discloses "display[ing] the higher priority image transmission portions of the prioritized graphics file before displaying the lower priority image transmission portions of the prioritized graphics file." In fact, Cash, col. 2, lines 57-62 recite: "When the low priority partition is received at the receiver location, its segments are interleaved with each generated high priority segment, in real time to recreate the video bitstream". The preceding quote from Cash does not teach or suggest that the higher priority image transmission portions are displayed before the lower priority image transmission portions are displayed. In fact, the meaning of the preceding quote from Cash may be understood from Cash, col. 3, lines 34-39 which recites: "Processor 221 interleaves the high priority data received from disc 222 with the low priority data received by network interface 223 and then sends the interleaved data to decoder 224. The output of decoder 224 is the requested video segment which is then displayed on the client monitor 225." Thus, the preceding quote makes it clear that it is the interleaved data (i.e., high and low priority data interleaved together) that is ultimately displayed. This demonstrates that Cash does not disclose displaying the higher priority image transmission portions of the prioritized graphics file before displaying the lower priority image transmission portions of the prioritized graphics file, as alleged by the Examiner's Answer.

In relation to the preceding argument, the Examiner's Answer in "Response to Argument" argues that "it would have been obvious to one skilled in the art to display the image data with priority, in order to improve the operator's responsiveness upon received image, as both references teach that real-time transmission of the image data with order. "

In response, Appellants contend that the preceding argument in the Examiner's Answer has presented a reason for obviousness created by the Examiner's Answer and not based on teachings from the prior art. Importantly, the preceding argument in the Examiner's Answer is not responsive to Appellant's argument that Cash does not teach or suggest that the higher priority image transmission portions are displayed before the lower priority image transmission portions are displayed, but instead teaches that the interleaved data (i.e., high and low priority data interleaved together) are displayed. Thus, the Examiner's Answer has not challenged Appellants argument refuting the allegation in the Examiner's Answer that Cash discloses "display[ing] the higher priority image transmission portions of the prioritized graphics file before displaying the lower priority image transmission portions of the prioritized graphics file."

Accordingly, Appellants contend that claim 2 is not unpatentable under 35 U.S.C. §103(a) over Scorse in view of Cash.

Claim 3

Since claim 3 depends from claim 1, which Appellants have argued *supra* to be patentable under 35 U.S.C. §103(a), Appellants maintain that claim 3 is not unpatentable under 35 U.S.C. §103(a).

Claim 4

Since claim 4 depends from claim 1, which Appellants have argued *supra* to be patentable under 35 U.S.C. §103(a), Appellants maintain that claim 4 is not unpatentable under 35 U.S.C. §103(a).

In addition, Appellants contend that Scorse in view of Cash does not disclose “further comprising an image interpreter, the image interpreter saving the prioritized graphics file in a prioritized graphics file format”.

The Examiner’s Answer argues: “Regarding claim 4, refer to the discussion for the claim 1 hereinabove, Cash et al further discloses that the image interpreter saving the prioritized graphics file in a prioritized graphics file format [408]. (See Fig 2-4)”.

In response, Appellants contend that step 408 in FIG. 4 refers only to high priority data and not to the prioritized graphics file which is claimed in claim 4 to contain both higher and lower priority data. See Cash, col. 6, lines 36-37 (“In step 408, client 220 stores the high priority data.”). Thus, the argument in the Examiner’s Answer in relation to claim 8 is not persuasive.

Accordingly, Appellants contend that claim 4 is not unpatentable under 35 U.S.C. §103(a) over Scorse in view of Cash.

Claim 5

Since claim 5 depends from claim 1, which Appellants have argued *supra* to be patentable under 35 U.S.C. §103(a), Appellants maintain that claim 5 is not unpatentable under 35 U.S.C. §103(a).

Claim 6

Since claim 6 depends from claim 1, which Appellants have argued *supra* to be patentable under 35 U.S.C. §103(a), Appellants maintain that claim 6 is not unpatentable under 35 U.S.C. §103(a).

In addition, Appellants contend that Scorse in view of Cash does not disclose “wherein the prioritized graphics file format comprises a plurality of image transmission portions of the prioritized graphics file, each image transmission portion corresponding to the at least one priority”.

The Examiner’s Answer argues “Regarding claim 6, refer to the discussion for the claims 1 and 5 hereinabove, Scorse et al discloses that the prioritized graphics file format comprises a plurality of image transmission portions of the prioritized graphics file, each image transmission portion corresponding to the at least one priority. (See Fig 1, Fig 3D, col 5 line 6-24, col 5 line 63-col 6 line 33)”.

In response, Appellants contend that the preceding argument in the Examiner’s Answer is inconsistent with the assertion in the Examiner’s Answer that “Scorse et al does not explicitly disclose that a single prioritized graphics file residing in the memory, which contains higher priority image transmission portions and lower priority image transmission portions. ” In essence, the argument in the Examiner’s Answer in relation to claim 6 alleges that Scorse discloses the claimed prioritized graphics file, even though the Examiner’s Answer elsewhere admits that Scorse does not disclose the claimed prioritized graphics file.

Accordingly, Appellants contend that claim 6 is not unpatentable under 35 U.S.C. §103(a) over Scorse in view of Cash.

Claim 8

The Examiner's Answer alleges: "Regarding claim 8, claim 8 is similar in scope to the combination of claims 1 and 2, and thus the rejections to claims 1 and 2 hereinabove are also applicable to claim 8."

In response, Appellants refer to Appellants' arguments presented *supra* in relation to claims 1 and 2.

Accordingly, Appellants contend that claim 8 is not unpatentable under 35 U.S.C. §103(a) over Scorse in view of Cash.

Claims 9-12

Since claims 9-12 depend from claim 8, which Appellants have argued *supra* to be patentable under 35 U.S.C. §103(a), Appellants maintain that claims 9-12 are not unpatentable under 35 U.S.C. §103(a).

In addition, the Examiner's Answer alleges: "Regarding claims 9-12, claims 9-12 are respectively equivalent to claims 3-6, and thus the rejections to claims 3-6 hereinabove are also respectively applicable to claims 9-12, but applied in view of the rejections to base claim 8."

In response, Appellants refer to Appellants' arguments presented *supra* in relation to claims 3-6, applied in view of claim 8.

Accordingly, Appellants contend that claims 9-12 are not unpatentable under 35 U.S.C. §103(a) over Scorse in view of Cash.

Claims 14-16

The Examiner's Answer alleges: "Regarding claims 14-16, claims 14-16 are similar in scope to claim 1, and thus the rejection to claim 1 hereinabove is also applicable to claims 14-16. In addition, Cash et al discloses that signal bearing media bearing the image interpreter wherein the signal bearing media comprises transmission media or recordable media. (See Fig 2)."

In response, Appellants refer to Appellants' arguments presented *supra* in relation to claim 1.

Accordingly, Appellants contend that claims 14-16 are not unpatentable under 35 U.S.C. §103(a) over Scorse in view of Cash.

Claims 17-21

Since claims 17-21 depend from claim 14, which Appellants have argued *supra* to be patentable under 35 U.S.C. §103(a), Appellants maintain that claims 17-21 are not unpatentable under 35 U.S.C. §103(a).

In addition, the Examiner's Answer alleges: "Regarding claims 17-21, claims 17-21 are respectively equivalent to claims 2-6 and thus the rejections to claims 2-6 hereinabove are also respectively applicable to claims 17-21, but applied in view of the rejections to base claim 14."

In response, Appellants refer to Appellants' arguments presented *supra* in relation to claims 2-6, applied in view of claim 14.

Accordingly, Appellants contend that claims 17-21 are not unpatentable under 35 U.S.C. §103(a) over Scorse in view of Cash.

Claim 23

The Examiner's Answer alleges: "Regarding claim 23, claim 23 is the corresponding program product of claims 14 and 17. Thus, the rejections to claims 14 and 17 hereinabove are also applicable to claim 23".

In response, Appellants refer to Appellants' arguments presented *supra* in relation to claims 14 and 17.

Accordingly, Appellants contend that claim 23 is not unpatentable under 35 U.S.C. §103(a) over Scorse in view of Cash.

Claims 24-29

Since claims 24-29 depend from claim 23, which Appellants have argued *supra* to be patentable under 35 U.S.C. §103(a), Appellants maintain that claims 24-29 are not unpatentable under 35 U.S.C. §103(a).

In addition, the Examiner's Answer alleges: "Regarding claims 24-29, claims 24-29 are respectively equivalent to claims 15-21 and thus the rejections to claims 15-21 hereinabove are also respectively applicable to claims 24-30, but applied in view of the rejections to base claim 23".

In response, Appellants refer to Appellants' arguments presented *supra* in relation to claims 15-22, applied in view of claim 23.

Accordingly, Appellants contend that claims 24-29 are not unpatentable under 35 U.S.C. §103(a) over Scorse in view of Cash.

Claim 31

The Examiner's Answer alleges: "Regarding claim 31, claim 31 is similar in scope to claim 1, and thus, the rejection to claim 1 hereinabove is also applicable to claim 31".

In response, Appellants refer to Appellants' arguments presented *supra* in relation to claim 1.

ss in relation to claim 31.

Accordingly, Appellants contend that claim 31 is not unpatentable under 35 U.S.C. §103(a) over Scorse in view of Cash.

Claim 32-34

Since claims 32-34 depends from claim 31, which Appellants have argued *supra* to be patentable under 35 U.S.C. §103(a), Appellants maintain that claims 32-34 are not unpatentable under 35 U.S.C. §103(a).

Accordingly, Appellants contend that claims 32-34 are not unpatentable under 35 U.S.C. §103(a) over Scorse in view of Cash, applied in view of claim 31.

Claim 35 and 38-40

The Examiner's Answer alleges: "Regarding claim 35 and 38-40, claim 35 and 38-40 are similar in scope to claims 8, 13 and 10-12. Thus, the rejections to claims 8, 13 and 10-12 hereinabove are also applicable to claim 35 and 38-40".

In response, Appellants refer to Appellants' arguments presented *supra* in relation to claims 8, 13 and 10-12.

Accordingly, Appellants contend that claims 35 and 38-40 are not unpatentable under 35 U.S.C. §103(a) over Scorse in view of Cash.

Claim 37

Since claim 37 depends from claim 35, which Appellants have argued *supra* to be patentable under 35 U.S.C. §103(a), Appellants maintain that claim 37 is not unpatentable under 35 U.S.C. §103(a).

In addition, Appellants contend that Scorse in view of Cash does not disclose “wherein the step of translating the image transmission portion of the prioritized graphics file into image data further comprises the step of decompressing the image transmission portion of the prioritized graphics file”.

The Examiner’s Answer argues: “Regarding claim 37, Scorse et al discloses that the step of translating the portion of the image file into image data further comprises that step of decompressing the portion of the image file. (See Fig 3-6)”.

In response, Appellants contend that the preceding argument by the Examiner’s Answer is inconsistent with the Examiner’s assertion that “Scorse et al does not explicitly disclose that a single prioritized graphics file residing in the memory, which contains higher priority image transmission portions and lower priority image transmission portions. ” In essence, the Examiner’s argument in relation to claim 37 alleges that Scorse discloses the claimed prioritized graphics file, even though the Examiner’s Answer elsewhere admits that Scorse does not disclose the claimed prioritized graphics file.

Accordingly, Appellants contend that claim 37 is not unpatentable under 35 U.S.C.

§103(a) over Scorse in view of Cash.

Claims 41-49

Since claims 41-43, 44-46, and 47-49 depend from claim 1, claim 14, and claim 31, respectively, which Appellants have argued *supra* to be patentable under 35 U.S.C. §103(a), Appellants maintain that claims 41-49 are not unpatentable under 35 U.S.C. §103(a).

In addition, the Examiner's Answer argues: "Regarding claims 41-49, claims 41-49 are similar in scope to the claim 5, and thus the rejection to claim 5 hereinabove is also applicable to claims 41-49."

In response, Appellants refer to Appellants' arguments presented *supra* in relation to claim 5.

In addition, Appellants maintain that the basis in the Examiner's Answer for rejecting claim 5 is not sufficient for rejecting claims 44-46, because claim 5 claims an apparatus whereas claims 44-46 claim a program product.

In addition, Appellants maintain that the basis in the Examiner's Answer for rejecting claim 5 is not sufficient for rejecting claims 47-49, because claim 5 claims an apparatus whereas claims 47-49 claim a method.

Accordingly, Appellants contend that claims 41-49 are not unpatentable under 35 U.S.C. §103(a) over Scorse in view of Cash.

GROUND OF REJECTION 2

Claims 7, 13, 22, 30, and 36 as allegedly being unpatentable under 35 U.S.C. §103(a) over Scorse et al. (5,426,513) in view of Cash et al (5,481,312), and further in view of Weber (5,477,445).

Claim 7

Since claim 7 depends from claim 1, which Appellants have argued *supra* to be patentable under 35 U.S.C. §103(a), Appellants maintain that claim 7 is not unpatentable under 35 U.S.C. §103(a).

In addition, Appellants contend that Scorse in view of Cash in view of Weber does not disclose the feature: "the simulation browser adding a delay between image transmission portions of the prioritized graphics file".

The Examiner's Answer argues that Weber discloses the preceding feature of claim 7 in the Abstract and col. 1, line 17-col. 2, line 29.

In response, Appellants contend that the Abstract and col. 1, line 17-col. 2, line 29 of Weber do not teach or suggest the preceding feature of claim 7.

Moreover, the Examiner's Answer has not supplied a legally persuasive argument as to why a person of ordinary skill in the art would modify Scorse by the teaching of Weber in relation to claim 7. In particular, established case law requires that the prior art must contain some suggestion or incentive that would have motivated a person of ordinary skill in the art to modify a reference or to combine references. See *Karsten Mfg. Corp. V. Cleveland Gulf Co.*, 242 F.3d 1376, 58 U.S.P.Q.2d 1286, 1293 (Fed. Cir. 2001) ("In holding an invention obvious in

view of a combination of references, there must be some suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to select the references and combine them in a way that would produce the claimed invention.”). See also *In re Gordon*, 733 F.2d 900, 902, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984 (“The mere fact that the prior art could be so modified would not have made the motivation obvious unless the prior art suggested the desirability of the modification.”). Appellant maintains that the Examiner’s Answer has not made any showing of where the prior art suggests incorporation of “the simulation browser adding a delay between image transmission portions of the prioritized graphics file” into the invention of Scorse. Thus, the Examiner’s Answer has created a reason for the combination that the Examiner’s Answer has not supported by the cited prior art. By not citing any suggestion or incentive in the prior art for incorporating the preceding feature of claim 7 into the invention of Scorse, the Examiner’s Answer has failed to establish a *prima facie* case of obviousness in relation to claims 7.

Accordingly, Appellants contend that claim 7 is not unpatentable under 35 U.S.C. §103(a) over Scorse in view of Cash and further in view of Weber.

Claims 13, 22, 30, and 36

Since claims 13, 22, 30, and 36 respectively depend from claims 8, 14, 23, and 35, which Appellants have argued *supra* to be patentable under 35 U.S.C. §103(a), Appellants maintain that claims 13, 22, 30, and 36 are not unpatentable under 35 U.S.C. §103(a).

In addition, the Examiner’s Answer alleges: “Regarding claims 13,22,30 and 36, claims 13,22,30 and 36 are similar in scope to the combination of claims 1 and 7, and thus the rejections

to claims 1 and 7 hereinabove are also applicable to claims 13, 22, 30 and 36.”.

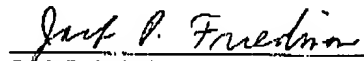
In response, Appellants refer to Appellants’ arguments presented *supra* in relation to claims 1 and 7.

Accordingly, Appellants contend that claims 13, 22, 30, and 36 are not unpatentable under 35 U.S.C. §103(a) over Scorse in view of Cash and further in view of Weber.

SUMMARY

In summary, Appellants respectfully request reversal of the rejection of claims 1-49 under 35 U.S.C. §103(a).

Respectfully submitted,



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